

REMARKS

Reconsideration and allowance of the subject application in view of the following remarks is respectfully requested.

The new grounds of rejection relying on *Suekane* are noted. Applicants respectfully traverse the new rejections for at least the following reasons.

1. With respect to all claims, *Suekane* as applied by the Examiner does not appear to include an enabling disclosure of the alleged teachings relied on by the Examiner in the new rejections because the machine-translated English version of *Suekane* attached to the Final Office Action is confusing and hard to understand. The Examiner is requested to provide an accurate and complete English translation of *Suekane* so that the final rejections can be properly understood and responded to.

In the section below, Applicants will address the final rejections, *as best understood*, in view of the drawings and English Abstract of *Suekane*.

2. With respect to independent claim 1, Applicants respectfully disagree with the Examiner that the applied references in combination teach or suggest the claimed side flaps each comprising an elastic sheet sandwiched between upper and lower non-woven fabric layers. The claim feature finds support in at least FIG. 5 which discloses that each side flap 3 comprises an elastic sheet 31 sandwiched between upper and lower non-woven fabric layers 32.

Applicants note the Examiner's interpretation of element 10 of *Suekane* as the claimed side flap, apparently to meet another claim feature, i.e., "the side flaps being disposed between said top sheet and back sheet." Applicants further note the Examiner's reliance on numerous teaching references for the claim feature as issue and the Examiner's conclusion that the claimed invention would have been obvious in view of the applied references. However, the Examiner has failed to

cite any particular teaching of the teaching references in support of her allegation that the claim feature at issue was known in the art. The rejection is therefore not well grounded and should be withdrawn or at least rephrased.

Applicants have further carefully reviewed the teaching references and did not locate any teaching or suggestion of the claim feature at issue, i.e., side flaps each comprising an elastic sheet sandwiched between upper and lower non-woven fabric layers.

Borgers appears to disclose a tape fastener 12/20 in FIG. 3. The tape fastener includes web 2, adhesive 3, plastic film 4, and another adhesive 5. No non-woven fabric is disclosed. If it is the Examiner's intention to read the structure on FIG. 1 of the reference on the claimed sandwiched structure, Applicants respectfully submit that FIG. 1 of the reference discloses at best a plastic film 4 disposed between web 2 and paper 7; the remaining layers being either adhesive or release material. Web 2 and paper 7 are neither disclosed, taught nor suggested by the reference to include non-woven fabrics. *See, Borgers*, for example, at column 2 lines 20-25. The reference fails to teach or suggest the claim feature.

Gesp appears to disclose a tape fastener 4/5/6 in FIG. 6. The tape fastener includes release 5, adhesive 6, and plastic film 4. No non-woven fabric is disclosed. If it is the Examiner's intention to read the structure on FIG. 4 of the reference on the claimed sandwiched structure, Applicants respectfully submit that FIG. 4 of the reference discloses at best three plastic films 4, 14 and 7; the remaining layers being either adhesive or release material. None of the relevant layers of the reference are disclosed, taught or suggested to include non-woven fabrics. *See, Gesp*, for example, at column 4 lines 5-10, 16 and column 5 line 55. The reference fails to teach or suggest the claim feature.

Pape appears to disclose a tape fastener in FIG. 5. The tape fastener includes elastomeric sheet 50 and anchor strips 30, 35. As can be seen in FIG. 5 of the reference, elastomeric sheet 50 is

not sandwiched between anchor strips 30, 35. If it is the Examiner's intention to read the structure on FIGs. 3-4 of the reference on the claimed sandwiched structure, Applicants respectfully submit that the reference still fails to teach or suggest any non-woven fabrics. See, *Pape*, for example, at column 2 lines 64-68. The reference fails to teach or suggest the claim feature.

Accordingly, the applied references singly or in combination fail to teach or suggest the claim feature of side flaps each comprising an elastic sheet sandwiched between upper and lower non-woven fabric layers. The obviousness rejection of independent claim 1 should therefore be withdrawn.

3. Still with respect to independent claim 1, Applicants respectfully disagree with the Examiner's interpretation of *Suekane* to disclose an engaging portion comprising an engaging portion in the form of adhesive 20 engageable with hooks 15. It should be noted that Applicants have criticized the additional provision of adhesive, such as *Suekane*'s adhesive 20, in the instant application, e.g., page 2, line 26 through page 3 line 3, as being disadvantageous. Therefore, the reference is believed patentably distinguishable from the disclosed embodiments of the claimed invention.

Further, the Examiner's interpretation of the outer surface of the *Suekane* front sheet 2 as the claimed non-engaging portion is incorrect. It should be noted that the claimed non-engaging portion is part of the engaging region which, in turn, is part of the side flap. Thus, the claimed non-engaging portion is part of the side flap. The side flap in *Suekane*, as applied by the Examiner, is element 10 which does not include the front sheet 2.

The obviousness rejection of independent claim 1 is improper and should therefore be withdrawn.

4. Still with respect to independent claim 1, Applicants respectfully disagree with the Examiner's obviousness rationale found in the paragraph bridging pages 3-4 of the Final Office

Action. The Examiner is kindly asked to refer to MPEP, section 2143, especially subsection E, for a guideline of applying the *KSR* case. "Design need" or "market pressure" alone do not establish obviousness. They are just a factor among a plurality of factors that should be properly analyzed before the claimed invention might be held obvious. Applicants note that the Examiner has not analyzed any of the other factors and, therefore, submit that the obviousness rejection of independent claim 1 is improper and should be withdrawn or at least rephrased.

5. Still with respect to independent claim 1, Applicants respectfully disagree with the Examiner's obviousness rationale found in the first full paragraph on page 4 of the Final Office Action as being evidentially unsupported. The Examiner is kindly asked to provide evidence that supports the allegation found at page 4, lines 11-15 of the Final Office Action.

In addition, the Examiner's statement at page 4, lines 15-16, i.e., "such that fixing tape substrate 21 comprises a non-woven fabric such as a thermoplastic film," is not understood. A person of ordinary skill in the art would know that non-woven fabric and plastic film are two different structures and would not find the Examiner's rationale persuasive.

For any of the reasons presented above at 2-5 with respect to independent claim 1, Applicants respectfully submit that claim 1 is patentable over the art as applied by the Examiner, and request that the final rejection of claim 1 be withdrawn.

6. With respect to independent claim 21, the claim is believed patentable over the art as applied by the Examiner for at least one or more of the reasons presented above at 2-5 with respect to independent claim 1 which includes limitations similar to claim 21.

7. The dependent claims are considered patentable at least for the reasons advanced with respect to the respective independent claims.

8. With respect to claim 9, Applicants respectfully submit that the *Suekane* reference

as applied by the Examiner does not teach or suggest the feature of this claim. The Examiner's interpretation of FIG. 2 of *Suekane* as disclosing the claim feature is noted. Applicants respectfully disagree, because FIG. 2 of *Suekane* does not teach or suggest that the base member 21 is folded. It is the tape fastener 10 that is folded in FIG. 2, but base member 21 is not.

In addition, since base member 21 is entirely disposed within the boundary of "side flap" 10 as interpreted by the Examiner, it cannot be foldable "along the outermost lateral edge of said side flap" as required by claim 9. The outermost lateral edge of "side flap" 10 as best seen in FIG. 2 of *Suekane* is the rightmost edge near reference numeral 9. A person of ordinary skill in the art would recognize that *Suekane* does not teach or suggest how base member 21 can be folded along such outermost edge.

Claim 9 is therefore separately patentable. Further amendments, such as rewriting of claim 9 in independent form or incorporation of claim 9 in claim 1, if required and indicated to be sufficient for allowance, will be made to place the claim in condition suitable for allowance.

9. With respect to claims 15 and 31, the teaching reference of *Tanzer* fails to teach or suggest "an opening in said attaching portion, a portion of said surface of said side flap being exposed through said opening and mechanically engageable with said hook member when said fixing tape is folded back." The Examiner's proposed incorporation of *Tanzer* in *Suekane* would not result in any opening in the *Suekane* base member 21 through which the upper surface of "side flap" 10 may be exposed. Claims 15 and 31 are therefore separately patentable.

Accordingly, all claims in the present application are now in condition for allowance. Early and favorable indication of allowance is courteously solicited.


The Examiner is invited to telephone the undersigned, Applicant's attorney of record, to facilitate advancement of the present application.

Serial No. 10/673,260

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

LOWE HAUPTMAN HAM & BERNER, LLP



Benjamin Hauptman
Registration No. 29,310

USPTO Customer No. 22429
1700 Diagonal Road, Suite 310
Alexandria, VA 22314
(703) 684-1111
(703) 518-5499 Facsimile
Date: February 20, 2008
BJH/KL/mps